

ST 03-0165-GIL 11/04/2003 EXEMPT ORGANIZATIONS

Organizations that are exclusively religious, educational, or charitable can make application to the Department for exemption identification numbers required to make tax-free purchases of tangible personal property for use or consumption. 86 Ill. Adm. Code 130.2007. (This is a GIL.)

November 4, 2003

Dear Xxxxx:

This letter is in response to your letter dated October 14, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Since we have not heard from you concerning our letter dated March 25, 2003, we are requesting this information again.

Our company is engaged in the solicitation of wholesale sales to schools, and other organizations in connection with fund-raising projects. We would like to update our enclosed records to assure we are following your state's guidelines with regard to sales tax on products sold for fund-raising purposes.

All orders are received in and are subject to acceptance at our location in CITY/STATE.

Current products include magazines, discount cards, candy, cookies, nuts, summer sausage, cheese, Christmas wrap and ornaments, cookbooks, flower bulbs, suntan and bath oils, candles and other small gift items. Some food contains are tin, plastic or glass.

Thank you for sending me a written confirmation that our interpretation is correct at this time.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers (an "E" number). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2080, enclosed.

Companies selling tangible personal property (which include suntan oils, cookbooks, and discount cards) to organizations that qualify as exclusively religious, charitable, or educational or to governmental bodies must be provided with an "E" number for sales to such organizations or governmental bodies to be tax exempt, unless another exemption can be documented.

While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability.

These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. In regard to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Organizations could use their E numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stand sales or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax.

Your wholesale sales to schools and other youth organizations in connection with fund-raising projects require that each organization provide you with an "E" number if such sales are made two or fewer times a year. However, if the school engages in this type of fundraising more than twice a year, the school will need to provide you with a Certificate of Resale.

Please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular state sales tax rate of 6.25%, plus any applicable local taxes. The sales of food referenced in your letter would generally qualify for the law (1%) rate of tax.

Based upon the information in your letter, your analysis of food sales is incorrect. Food sales are not exempt from tax. Rather food is subject to a tax rate of 1% as explained above. When food items are being sold in a set with non-food items, the applicable tax would depend upon whether the set was primarily made up of food items. If more than 50% of the value of a set, package or gift basket of items sold together is derived from food products eligible for the reduced rate of tax, then the set, package or gift basket is considered food and is taxed at the reduced rate. If, however, over 50% of the value of the basket is derived from non-food or high rate items (e.g., the basket and high

rate food items such as alcoholic beverages or soft drinks), then the basket is taxable at the high rate established for general merchandise.

Some daycare providers are eligible to receive "E" numbers. See, 35 ILCS 120/2h. Please see the above discussion of "E" numbers. For information on teacher-sponsored student organizations, see 86 Ill. Adm. Code 130.2006. Taxation of freight charges is explained at 86 Ill. Adm. Code 130.450.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.